UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entrega Gas Pipeline LLC	Docket Nos. CP04-413-002 CP04-414-002 CP04-414-003

ORDER ACCEPTING TARIFF SHEETS
AND REQUIRING TARIFF REVISIONS

(Issued March 30, 2006)

1. On November 16, 2005, Entrega Gas Pipeline LLC (Entrega) filed its proposed FERC Gas Tariff, Original Volume No. 1 to comply with the Commission's August 9, 2005 order that granted Entrega a certificate to construct and operate a new interstate gas pipeline.[1] As discussed below, we accept the tariff sheets in Entrega's FERC Gas Tariff, Original Volume No. 1 to be effective on February 23, 2006, subject to further revision.

I. Background

2. On September 17, 2004, Entrega filed an application for a certificate of public convenience and necessity, authorizing it to construct a new, interstate natural gas pipeline consisting of 136 miles of 36-inch diameter pipeline, from the Meeker Hub in Rio Blanco County, Colorado, north to Wamsutter in Sweetwater County, Wyoming (Segment 1) and 191 miles of 42-inch diameter pipeline that extends from Wamsutter southeast to the Cheyenne Hub in Weld County, Colorado (Segment 2).[2]

3. On August 9, 2005, the Commission issued an order approving Entrega's proposal and granted the requested authorizations, subject to conditions (certificate order). The

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[1] *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 (2005) (certificate order), *order on reh'g*, 113 FERC ¶ 61,327 (2005).

[2] Entrega also requested in Docket No. CP04-414-000, a blanket certificate pursuant to section 7(c) of the Natural Gas Act and Part 284, subpart G of the Commission's regulations to provide open transportation services, and a blanket construction certificate, per Part 157, Subpart F, in Docket No. CP04-415-000.

certificate order required Entrega to make a tariff filing thirty to sixty days prior to commencement of service to place rates into effect and to make the changes required by the certificate order and any other necessary changes. On January 25, 2006, the Director, Office of Energy Projects, approved Entrega's request to commence Interim Service on the Segment 1 facilities. By letter dated February 14, 2006, Entrega informed the Commission that Entrega has completed the purge and pack operations on the Segment 1 facilities and its firm shipper now plans to nominate to flow gas as early as February 23, 2006. Thus, Entrega requests an effective date of February 23, 2006 for its actual tariff sheets filed in this proceeding.

4. Entrega states that since September 2004, a number of events have occurred that necessitate various changes to Entrega's proposed tariff. On May 26, 2005, Entrega entered into an Operations and Reimbursement Agreement (Operating Agreement) with Kinder Morgan Energy Partners, L.P. (KMEP), which KMEP subsequently assigned to Kinder Morgan NatGas Operator LLC (KM NatGas).[3] Under the Operating Statement, KM NatGas will be responsible for operating the Entrega Pipeline, including marketing capacity.

5. Entrega also states that it has converted from a corporation to a limited liability company and Entrega's proposed tariff sheets reflect this name change associated with the conversion from Entrega Gas Pipeline Inc. to Entrega Gas Pipeline LLC. In addition, Entrega notes that the Commission has issued a number of orders recently that Entrega states it believes necessitate certain tariff revisions in order to be consistent with current Commission policy. Entrega states that these orders include the Commission's Creditworthiness Policy Statement[4] and recent orders regarding permissible discounts, penalty provisions, fuel loss and unaccounted for gas provisions, and negotiated rate authority.

II. <u>Notice, Interventions and Protests</u>

6. Public notice of Entrega's filing in Docket No. CP04-414-002 was issued on November 22, 2005. Interventions and protests were due on December 15, 2005. Motions to intervene were filed by Ultra Petroleum Corporation and New Jersey Resources Corporation. On November 30, 2005, BP America Production Company and

[3] Entrega filed the Operating Statement with the Commission on August 11, 2005, as an update to Exhibit M of Entrega's certificate application.

[4] *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) ("Creditworthiness Policy Statement").

BP Energy Company (collectively "BP") filed a protest. On December 13, 2005, in Docket No. CP04-414-003, Entrega filed an answer and included with their answer tariff sheets to address the concerns raised by BP in its protest. Although our rules prohibit answers to protests, we may for good cause, waive this provision.[5] We find good cause to do so in this instance as Entrega's answer has assisted our decisionmaking. Public notice of Entrega's December 13 filing was made on January 25, 2006. Interventions and protests were due on February 8, 2006. No comments were filed.

III. Restatement of Recourse Rates

7. In its certificate application, Entrega proposed initial recourse rates for Interim Service, Phase I service, and Phase II service based on the straight-fixed variable rate design method, a 12 percent return on equity, a 7 percent cost of debt, a total effective tax rate of 36.03 percent, and a straight-line depreciation rate of 2.86 percent (or 35-year useful life).[6] Entrega proposed a two-part rate for firm transportation service and a one-part rate for interruptible transportation service based on a 100 percent load factor derivative of the firm transportation rate. For Interim Service, the maximum reservation recourse rate will be $4.681 per Dth, for Phase I, the maximum reservation recourse rate will be $12.413 per Dth, and for Phase II, the maximum reservation recourse rate will be $7.072 per Dth. For Phase I, Entrega proposes a commodity rate of $0.001 per Dth and for Phase II, a commodity rate of $0.003 per Dth. The certificate order approved Entrega's rates as proposed without modification.

8. Entrega proposes to place the approved rates into effect as previously filed. Entrega has restated these rates on a monthly basis to be consistent with Rate Schedule FT §3.1(a). Further, as the certificate order requires, Entrega will file a cost and revenue study at the end of its first three years of actual operation of the entire Project (*i.e.*, both Phases I and II) to justify its existing firm and interruptible recourse rates; or a Natural Gas Act (NGA) section 4 rate case to propose alternative rates to be effective no later than three years after commencement of service on the entire Project.

IV. Changes to Implement Certificate Order

A. Interruptible Transportation (IT) Revenue Crediting (GT&C § 20.4)

9. The certificate order rejected Entrega's proposal to credit 50 percent of its IT revenues to Entrega's negotiated rate shippers. The Commission directed Entrega to

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[5] *See* 18 C.F.R. § 385.213(a)(2) (2005).

[6] On November 4, 2004, Entrega tendered a filing to revise its proposed rates to correct an error in its tax calculations.

revise its tariff to reflect that 100 percent of IT revenues would be credited to only Entrega's recourse rate shippers. Entrega has made the required changes.[7] Subsequently, on December 29, 2005, the Commission issued its order on rehearing of the certificate order where among other things, it granted Entrega's request for rehearing of our decision to reject Entrega's proposal to credit 50 percent of IT revenues to Entrega's negotiated rate shippers.[8] On January 19, 2006, Entrega filed tariff sheets to comply with the December 29 order.[9] We accept Entrega's revisions as being consistent with our December 29 order on rehearing.

B. <u>Transfer of Discounts (FT § 3.3)</u>

10. In the certificate order, the Commission cited its order on remand in *Williston Basin Interstate Pipeline Co.* in which it determined that it could no longer justify requiring pipelines to allow discount rate shippers to transfer their rate discounts to alternate points.[10] In *Williston Basin*, the Commission also found that, per *El Paso Natural Gas Co.*, [11] pipelines could require shippers to pay the maximum rate when they utilize alternate points. The certificate order permitted Entrega to remove language reflecting the presumption that a shipper may retain its discount when it moves to alternate points and the two-hour processing requirement for discount requests. Entrega has made those changes, and also per the *Williston Basin* order on remand, has added language consistent with the *El Paso* policy. We accept Entrega's revisions.

C. <u>NAESB Standards</u>

11. Pursuant to Order No. 587-S,[12] the certificate order required Entrega to comply with NAESB Standard 1.7 and any other future NAESB standards. Standard 1.7 includes

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[7] *See* Original Sheet No. 241.

[8] *Entrega Gas Pipeline Inc.*, 113 FERC ¶ 61,327 at P 17 (2005).

[9] *See* First Revised Sheet No. 241 and Original Sheet No. 241.01. Entrega's January 19 filing was noticed on February 2, 2006 with comments due by February 16, 2006. No comments were filed.

[10] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210 (2005).

[11] *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311 (1993).

[12] *Standards for Business Practices of Interstate Natural Gas Pipelines,* 111 FERC ¶ 61,203 (2005).

standards regarding implementation of Order No. 2004[13] and gas quality standards. Entrega has either incorporated these provisions into its Tariff by reference (*see e.g.*, GT&C section 1.22, definition of NAESB) or verbatim. In addition, Entrega has modified certain of its tariff provisions to ensure their consistency with current NAESB standards. These tariff provisions include Electronic Bulletin Board/Interactive Website (GT&C section 24), capacity release (GT&C section 28), and scheduling and capacity allocation (GT&C section 4). We accept Entrega's revisions.

D. Thermal Floor Provision and Uniform Hourly Flows

12. In response to Commission Staff data requests, Entrega agreed to eliminate its proposed thermal floor for segmented transactions, and Entrega agreed to modify its tariff to clarify that shippers may flow gas on a non-uniform hourly basis.[14] The certificate order required Entrega to make these changes and Entrega has done so.

E. Reservation Charge Adjustments (FT § 3.4)

13. In the certificate order, we required Entrega to make changes consistent with our policy on reservation charge credits where there are service interruptions due to non-*force majeure* and *force majeure* events. We stated that a pipeline must provide a full reservation charge credit whenever there is a service interruption due to a non-*force majeure* event beginning at Day 1. If service interruptions are due to a *force majeure* event, the Commission allows for a full reservation charge credits after a short grace period (*i.e.*, 10 days or less) or partial crediting starting at Day 1. Entrega has made the tariff changes and we accept them.

F. Liability for Service Interruptions (FT § 3.4)

14. Section 3.4 of Entrega's *pro forma* Rate Schedule FT provided that reservation charge credits will be a Shipper's "sole and exclusive remedy" for Entrega's failure to schedule nominated and confirmed quantities unless the Shipper incurs damages as the

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[13] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. Vol. III, Regs. Preambles ¶ 31,155 (2003), 68 Fed. Reg. 69134 (Dec. 11, 2003); Order No. 2004-A, FERC Stats & Regs., Regs. Preambles ¶ 31,161 (2004), 69 Fed. Reg. 23562 (Apr. 29, 2004); Order No. 2004-B, FERC Stats. & Regs., Regs. Preambles ¶ 31,166 (2004), 69 Fed. Reg. 48371 (Aug. 10, 2004); Order No. 2004-C, FERC Stats. & Regs., Regs. Preambles ¶ 31,172 (2005), 70 Fed. Reg. 284 (Jan. 4, 2005); Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

[14] *See* Entrega's revised GT&C section 22, section 2.4 of Rate Schedule FT and section 2.4 of Rate Schedule IT.

result of Entrega's "gross negligence or willful misconduct". In the certificate order, the Commission observed that it has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs. Further, we said that consistent with *Guardian Pipeline, L.L.C.*,[15] a pipeline may limit its liability for negligent acts to "direct damages". However, we were unwilling to make a blanket finding that the only possible direct damages in the context of negligent inability to schedule service are the reservation charge credits for the period of service failure. We found though that as proposed section 3.4 could be construed as to insulate Entrega from direct damages due to simple negligence, contrary to Commission policy. Accordingly, we directed Entrega to modify its liability and indemnification provision to clarify that "nothing in that section [3.4] insulates Entrega from liability for direct damages resulting from its own negligence."

15. In its protest, BP submits that tariff language that Entrega has kept in section 3.4 is problematic. BP points to section 3.4 which still states that the reservation charge credit is the sole remedy "unless damages incurred by Shipper are shown to be the result of gross negligence or willful misconduct." BP contends that such language could be interpreted as shielding Entrega from liability associated with simple negligence.

16. In its answer, Entrega states that BP ignores the revised language proposed in Entrega's compliance filing and instead complains that the tariff language that the Commission approved in the certificate order is now problematic. First, Entrega asserts that such a challenge is a collateral attack on the tariff language that was approved by the Commission in the certificate order. Furthermore, Entrega submits, the language proposed here by Entrega is consistent with the Commission's decision in *Guardian*, where the Commission also required the pipeline to modify its tariff so as "not to exclude it from liability for direct damages arising from its own negligence."[16]

17. We agree with BP. As we stated in the certificate order, the Commission has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs.[17] We reiterated this policy in the *Guardian* case, and directed Guardian to revise its tariff so it would not be shielded from

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[15] *Guardian Pipeline, L.L.C.*, 101 FERC ¶ 61,107 at P 18 (2002).

[16] *Id.* In a subsequent order, the Commission approved Guardian's proposed language clarifying that it "is liable for direct damages resulting from its own negligence." *See* Director Letter Order issued on January 31, 2003, Docket No. RP02-532, *et al.*

[17] *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 65.

liability for direct damages arising from its own negligence.[18] Similarly, we directed Entrega to modify section 3.4 to clarify that nothing in that section insulates Entrega from liability resulting from its own negligence. While Entrega has made the required change, there remains in section 3.4 the provision that credits of the transportation charges are the sole and exclusive remedy. We agree with BP that this provision creates an unnecessary ambiguity; deleting that provision[19] will make the tariff consistent with our policy that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs.

V. Changes to Effectuate Operating Agreement

18. As Entrega noted in its transmittal letter, KM NatGas will be operating the Entrega Pipeline system, including marketing capacity, scheduling service, facilitating capacity release transactions and otherwise interfacing with Entrega's customers. As a result, Entrega states that Entrega and Kinder Morgan have determined that it is necessary to conform certain tariff provisions of Entrega's tariff to Kinder Morgan's approved tariff.

19. The tariff provisions that Entrega has revised for ease of administration and consistency of operation include: Scheduling Priorities (GT&C section 4.2) and Imbalance Management (GT&C sections 22.3 and 22.4). Entrega states the changes that it made will ensure consistency with current NAESB standards and KM NatGas' operating systems. Entrega states that the hierarchy of the scheduling priorities set forth in section 4.2, however, remains unchanged.

20. Entrega has also revised its Imbalance Management procedures (GT&C section 22.4) to eliminate the option of rolling over an imbalance into the next month because, upon further consideration, Entrega believes this option is not economically viable given current market volatility. In addition, Entrega states the rollover could create operational difficulties as the pipeline would be required to accomplish the rollover using linepack given that there is no storage connected to the Entrega pipeline. Further, Entrega states its revised Imbalance Management procedures provide significant flexibility by way of netting and trading for shippers to adequately manage their imbalances.

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[18] *Guardian Pipeline, L.L.C.*, 101 FERC ¶ 61,107 at P 18 (2002).

[19] Entrega is directed to file a revised section 3.4 (g) of its tariff by deleting the following:

"Such crediting shall be Shipper's sole and exclusive remedy for Transporter's failure as described herein unless damages incurred by shipper are shown to be the result of gross negligence or willful misconduct by Transporter. If a court makes such a finding, then Transporter shall only be liable for its proportionate amount of negligence."

21. Entrega proposes that, in lieu of the rollover option, all imbalances will be cashed out, which ultimately should present less burden to the shipper in managing its imbalances. In addition, Entrega has revised GT&C section 22.4(b)(iv) to require Entrega to post the Cash Out Index Price no later than the tenth day of the month following the production month. Entrega submits that the original requirement to post the Cash Out Index Price no later than the fifth day of the month does not provide sufficient time to post accurate price information as the prices for the previous week's index are not available until the first Monday of the following month. Entrega states that to ensure the posted Index Price is as current as possible, Entrega will typically require more than five but less then ten days within which to receive and post the price information.

22. We find that Entrega's changes to its imbalance management and scheduling provisions are in accord with current Commission policy. As Entrega states, the purpose of these revisions is to enable KM NatGas to seamlessly operate the Entrega pipeline. We find that these tariff provisions will promote the efficient and reliable operation of the Entrega system by KM NatGas pursuant to the Operating Statement.

VI. Other Changes to Implement Commission Orders and Policy

23. Entrega states that as it has undertaken to modify its tariff per the certificate order, Entrega has examined all of its tariff provisions to ensure that they are consistent with current Commission policies, particularly with orders that have been issued since Entrega filed its certificate application. As a result of this review, Entrega has determined that certain additional tariff changes are necessary, as described below.

A. Facility Reimbursement Provision (FT § 3.1)

24. Entrega has revised its Facility Reimbursement provision to permit the shipper to choose its reimbursement option, as opposed to requiring the pipeline's consent.[20] Entrega states that this change will provide the shipper with additional flexibility in determining how it wishes to pay Entrega for an interconnection the shipper has requested. We accept Entrega's revisions.

B. Discount Conditions (FT § 3.3, IT § 3.3)

25. Entrega has revised its discount provisions to incorporate the most up-to-date list of permissible generic discounts so that Entrega may offer such discounts without

[20] *Citing Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,245 at 61,848 (2001).

deviating from its tariff. These provisions are consistent with current Commission precedent.[21] We accept Entrega's revisions.

C. **Creditworthiness (GT&C § 25)**

26. On June 16, 2005, the Commission issued its Creditworthiness Policy Statement,[22] setting forth its policy regarding shipper information provided to a pipeline, criteria for determining creditworthiness, collateral requirements for non-creditworthy shippers, forms of security, suspension and termination of service and creditworthiness issues as they relate to capacity release transactions. To comport with these new policies, Entrega revised its creditworthiness provisions at GT&C section 25. These revisions incorporate verbatim the NAESB standards regarding creditworthiness and we accept them.

D. **FL&U Provisions (GT&C § 26)**

27. The certificate order approved Entrega's proposed revision for the recovery of fuel gas and lost and unaccounted for gas (FL&U Gas). Section 26 of Entrega's GT&C includes a fuel adjustment mechanism, whereby Entrega will recompute the FL&U Gas percentage at least annually. Around the same time that the Commission issued the certificate order, it also issued an order in *El Paso Natural Gas Co.*,[23] rejecting a provision, which like Entrega's, permitted the pipeline to adjust its fuel percentage more frequently than annually. In *El Paso*, the Commission found that such a provision violates section 154.403 of its regulations, which requires a statement of the frequency of the adjustments and the dates on which the adjustments will become effective for provisions such as fuel trackers. Entrega states that to ensure that its tariff is consistent with current Commission policy on this issue, Entrega has modified GT&C section 26.3 to eliminate its discretion to recompute the fuel percentage more frequently than annually. Entrega states it will submit its annual fuel filing by April 15 of each year, starting after the first full year of operations. We accept Entrega's revisions.

E. **Negotiated Rate Authority (GT&C § 29)**

28. Entrega revised its negotiated rate provisions to ensure their conformity with current Commission policy per recently approved provisions. In addition, Entrega has

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[21] *See, e.g., Northern Natural Gas Co.*, 111 FERC ¶ 61,287, *reh'g*, 113 FERC ¶ 61,119 (2005); *Southern Star Central Gas Pipelines, Inc.*, 113 FERC ¶ 61,110 (2005).

[22] *See Creditworthiness Policy Statement,* 111 FERC ¶ 61,412 (2005).

[23] *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 at P 38 (2005).

included a provision permitting it to negotiate its fuel retention component, per Commission policy and recent orders.[24] We accept Entrega's revisions.

F. Critical Conditions (GT&C § 30)

29. Entrega has revised GT&C section 30 (now called "Operational Control Sequence") to make it more consistent with Order No. 637's operational flow order (OFO) standards and to provide additional shipper flexibility. As revised, Entrega will now have a three-level system, rather than a two-level system, which will provide an intermediate measure and thus another opportunity for a shipper to avoid the level-3, Critical Time OFO, with its associated significant penalties. Entrega states that as a result, the only substantive change to this provision is the addition of the middle tier, Directional Notice phase. GT&C section 30 now provides that failure to adhere to a Directional Notice will result in a penalty of either 2 times the index price or 5 times the index price, depending on the level of imbalance (see section 30.5F and G). Entrega's proposed revisions are reasonable and consistent with similar provisions approved for other pipelines. Accordingly, we accept them.

VII. Ministerial changes and Other Minor Clarifications

A. Entrega Corporate Conversion and Name Change

30. On November 8, 2005, Entrega filed a letter notifying the Commission that Entrega has converted from a Delaware corporation to a Delaware limited liability company. Entrega requested that the Commission redesignate Entrega's certificate in the name of Entrega Gas Pipeline LLC and also reflect Entrega's name change in all dockets in which Entrega is a participant. Finally, Entrega pledged to incorporate the name change into Entrega's tariff when it filed to comply with the certificate order. The tariff submitted here reflects Entrega's corporate conversion and is stated in the name of Entrega Gas Pipeline LLC.

B. Revisions to Rate Sheets

31. Entrega has renumbered its rate sheets to show more clearly, in light of the phased construction schedule, which sheets will be effective at what times. Sheet No. 20 will be effective during the time period that Entrega provides Interim Service from Meeker to Wamsutter. Sheet No. 20A will be effective for the time period that service is provided on the entire Phase I of the Project, *i.e.*, all of the pipeline facilities from Meeker to

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[24] *See, e.g.*, *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199 at n. 20 (2005) (noting that fuel discounting is permitted for negotiated rates); *Transwestern Pipeline Co.*, 102 FERC ¶ 61,183 (2003).

Cheyenne. Thus, once all of the pipeline facilities are placed into service, Sheet No. 20 will terminate and Sheet No. 20A will take its place. Once Phase II has been placed in service, Sheet No. 20A will terminate and Sheet No. 20B will become effective.

C. Rate Schedule FT Pro Forma Transportation Agreement

32. In support of its discount and negotiated rate authority, Entrega has included as Exhibit C to Rate Schedule FT *Pro Forma* Transportation Agreement, blank space for the inclusion of additional rate provisions related to such agreements. As Entrega states, the purpose of this revision is, consistent with the Commission's current negotiated rate policy,[25] to provide a starting point for the inclusion of rate provisions that do not precisely fit within the body of the *pro forma* agreement, but should be incorporated into the agreement. Entrega's inclusion of Exhibit C is accepted as consistent with current Commission policy and we accept it.[26]

D. Rollover/Evergreen Provisions (GT&C § 20)

33. Section 20.2(g) of Entrega's GT&C sets forth a firm shipper's right to roll over its contract for additional two-year terms, by providing prior written notice to Entrega of its intent to exercise this right. Upon review of this provision, Entrega determined that additional clarification is necessary to inform all negotiated rate shippers that, upon mutual agreement of the shipper and Entrega, the rate for service under the extended contract will be the same as the rate applicable to the pre-existing transportation agreement. As revised, GT&C section 20.2 clarifies that the rate for extended service to Entrega's Initial Shipper on the pipeline will be the rate under its pre-existing contract. Entrega asserts that with this clarification, firm shippers will be able to make a more informed choice with regard to exercise of their evergreen rights.

34. BP filed a protest. BP claims that the rollover right to renew a contract at a rate that is below the recourse rate would violate the principle that those parties who value the product or service the most should be the ones to have it. BP notes that in the right of

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[25] *See Natural Gas Pipeline Negotiated Rate Policies and Practices, Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003).

[26] For example, a pipeline's currently effective Form of Service Agreement may employ a "fill-in-the-blank" type format which allows items identifying the transaction to be added to the service agreement. The Commission has permitted parties to include such items (*i.e.*, shipper name, volume, rate, term, receipt/delivery points etc. in a contract pursuant to its material deviation policy). *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001).

first refusal context which it claims is closely analogous to the contractual renewal situation here, the Commission requires competitive bidding.

35. In its answer, Entrega states that BP's arguments should be rejected because: (1) the Commission has rejected this identical argument made by BP and others in other recent proceedings; and (2) BP's protest is a collateral attack on the certificate order approving the rollover right in Entrega's *pro forma* tariff without requiring competitive bidding. Entrega points to *TransColorado Gas Transmission Co.*, [27] where the Commission found that longstanding Commission policy permits pipelines to offer rollover or evergreen rights in contracts, and thus rejected BP's request that the Commission require TransColorado to require the maximum or recourse rate for contract extensions under the roller rights provision.[28] Entrega notes that the certificate order approved the *pro forma* tariff language that Entrega proposed and which provided that "[a]ll firm shippers shall have the right to rollover their TSAs for additional two-year terms beyond the terms of their existing TSAs." Entrega states its revised tariff language was intended to clarify that subject to the agreement of Transporter, the rate for extended service will be the rate in the pre-existing contract. Entrega states that this change does not go to the basic issue of rollover in the absence of competitive bidding that BP raises in its protest.

36. We reject BP's protest. As we said in Order No. 636-A, under current industry practice, evergreen clauses are frequently included in service contracts, and the Commission intended in Order No. 636 to make clear that this device will remain available to parties who agree to this method of providing continued service.[29] The Commission assumes that the pipeline will always seek the highest possible rate from

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[27] *TransColorado Gas Transmission Co.*, 109 FERC ¶ 61,117 (2004).

[28] *Id.* at P 9. *See also, Northern Natural Gas Co.*, 113 FERC ¶ 61,119 at P 37 (2005) (extending a shipper's contract at a discount without being posted to give third parties an opportunity to bid a higher rate is not prohibited by the Commission).

[29] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* FERC Stats. & Regs., Regs. Preambles ¶ 30,950 at 30,628 (1992).

non-affiliated shippers, since it is in its own economic interest to do so.[30] We have followed that policy in our recent decisions in *TransColorado* and *Northern Natural* proceedings where we permitted pipelines to negotiate extensions to existing contracts without offering the subject capacity to other shippers. Entrega's revised tariff language GT&C section 20.2(g) is consistent with our precedent and we accept it.

E. Incidental Purchases and Sales (GT&C § 13.7)

37. In Entrega's *pro forma* tariff included with its certificate application, Entrega proposed in GT&C section 13.7 to provide for incidental purchases and sales. Entrega states it has revised this provision to more clearly define the circumstances under which the operator may buy or sell gas and the points at which such purchases and sales could occur.

38. Specifically, revised section 13.7 provides that Entrega may purchase and or sell gas to the extent necessary to maintain system pressure, to acquire, maintain or manage line pack, to implement cash out procedures, and to perform other system management or operational functions deemed necessary from time to time in connection with providing transportation services. This section provides that the point of any such purchase or sale shall occur at any receipt point or delivery points on Entrega's system, or at points located within any off-system capacity held by Entrega on other systems. Such purchases or sales shall be authorized pursuant to Entrega's blanket certificate and will be made on a non-discriminatory basis. Entrega states this provision is consistent with Commission policy.[31]

39. BP filed a protest. BP states that it does not oppose the concept of allowing a pipeline to do operational purchases and sales and agrees that there are situations where operational purchases and sales are appropriate to support system operations. However, BP states that certain conditions should be imposed on these transactions to ensure that Entrega does not abuse this authority. BP raises several concerns. First, BP states Entrega's proposal does not include a competitive bidding process when the the pipeline

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[30] *See Northern Natural Gas Co.*, 113 FERC ¶ 61,119 at P 42. With respect to rollover provisions in agreements with affiliates the Commission has found that the fact that affiliate transactions are subject to separate reporting requirements ensures that rollover rights are exercised in a just and reasonable manner. *TransColorado Gas Transmission Co.*, 109 FERC ¶ 61,117 at P 10.

[31] *See, e.g., ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 59, *reh'g*, 111 FERC ¶ 61,290 (2005); *Colorado Interstate Gas Co.*, 107 FERC ¶ 61,312 (2004); *Dominion Transmission, Inc.*, 106 FERC ¶ 61,029 (2004).

wants to do an operational purchase/sale. BP states the Commission has required a pipeline to utilize competitive bidding for operational gas purchases and sales because this process ensures that (1) the pipeline gets the best possible terms for the operational purchase/sale, and (2) all parties have an equal opportunity to compete to sell or purchase gas from the pipeline. Moreover, BP submits, competitive bidding will ensure that Entrega cannot give a preference to its affiliates in implementing operational gas purchases and sales. In its answer, Entrega agreed to revise its tariff to address BP's concern and included with its filing, Substitute Original Sheet No. 241. Sheet No. 241 now states that the availability for sale or interest in purchasing gas will be posted for bidding on Entrega's website in accordance with the applicable bidding provisions set forth in GT&C section 28. We accept Entrega's revision.

40. BP also claims that Entrega should be required to file an annual report of its operational gas purchases and sales. BP states that the Commission requires such reports so that the Commission and shippers can monitor the prudence of, and the costs and revenue associated with, a pipeline's operational gas purchases and sales. BP states these reports included detailed information about each operational gas transaction, including the identity of the counter-party and whether such party is an affiliate of the pipeline, the price and gas quantities involved, the costs and revenues, the date of such purchase or sale, and any related agreements between the pipeline and the counter-party. In its answer, Entrega states that it has also revised sheet no. 241 to provide that if that if Entrega completes a purchase or sale of gas, Entrega will post on its website within two days after the transaction is complete, the name of the counterparty, the date of sale, volume, and price. Entrega submits its proposal to post information in close to real time is an adequate substitute for an annual report that BP suggests is required.

41. We will still require Entrega to file an annual report as we have required of other pipelines in order to justify each operational purchase and sale.[32] That annual report will include more detailed information than what Entrega proposes here such as the source of the purchase or sale, the costs and revenues associated with such sales, as well an explanation as to the purpose of any operational purchase and or sale.[33] Further, we note that consistent with previous orders, we have required pipelines to identify all entities, including affiliates, from which the pipeline purchases operational gas in its annual report. Like other pipelines, Entrega is required to fully support costs and revenues in its various tracking filings (*e.g.*, fuel and cash outs) where operational purchases and sales

[32] *See e.g.*, *Dominion Transmission, Inc.*, 106 FERC ¶ 61,029 at P 14 (2005).

[33] *Id.*

may be reflected. These provisions reasonably provide an opportunity to review issues of affiliate concerns that may be raised by the Commission or by Entrega's shippers.[34] Entrega is directed to revise its tariff to provide for the filing of an annual report on its operational gas purchases and sales.

42. Finally, BP states that Entrega's proposal does not address the scheduling priority of an operational purchase and sale. BP maintains that the Commission has recognized that an operational purchase or sale must have a lower priority than both primary and secondary firm service. BP submits that an operational purchase or sale should have a lower priority than interruptible transportation as well. In its answer, Entrega states it is willing to clarify that transportation services associated with operational sales and purchases will be scheduled after primary and secondary firm. This is consistent with Commission precedent.[35] However, Entrega states that BP's suggestion that operational sales and purchases of gas should be scheduled after interruptible transportation must be rejected. Entrega states that the Commission has not required what BP suggests, and further states that if Entrega were required to schedule interruptible service before operational sales and purchases of gas, its ability to effectively manage its system in order to ensure that it is able to meet its firm service obligations may be compromised. Entrega is correct. The Commission finds that the scheduling of operational gas with a priority higher than any firm service is inconsistent with the Commission's regulations and policy.[36] We direct Entrega to file revised tariff sheets setting forth the scheduling priority of operational gas purchases and sales.

VIII. Miscellaneous Changes

43. Entrega states that as it has undertaken its tariff review, it has identified several provisions that require revision. Entrega states that these changes described below will provide additional shipper flexibility.

A. Revisions to Rate Schedule PAL and Deletion of Rate Schedule APAL

44. Entrega has revised its Park and Loan Service (PALS) to more clearly define the procedures for requesting the service, and has eliminated its proposed Automatic Parking

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[34] *Colorado Interstate Gas Co.*, 111 FERC ¶ 61,216 at P 16 (2005).

[35] *Id.* at P 19. *See also, Wyoming Interstate Co.*, 111 FERC 61,215 at P 24 (2005).

[36] *See e.g., Colorado Interstate Gas Co.*, 111 FERC ¶ 61,216 at P 19 (2005).

and Lending Service (APALS).[37] Entrega states that its PAL service, as revised, provides significant flexibility to shippers to accomplish the same objectives as the original PAL and APAL services. Entrega states that its current shipper has stated no objection to the removal of APAL service. Entrega further states that should a demand for such a service arise in the future, Entrega will consider re-proposing it at that time. Entrega's elimination of its Rate Schedule APAL is accepted.

B. Gas Quality Specifications (GT&C § 5)

45. Entrega has revised its tariff to now more precisely define its gas quality specifications. In addition, GT&C section 5.4 continues to permit Entrega to waive the gas quality specifications when doing so will not interfere with Entrega's ability to serve other customers and will not threaten system integrity. We accept Entrega's revisions as consistent with Commission policy.[38]

The Commission orders:

The tariff sheets contained in Entrega's FERC Tariff, Original Volume No. 1, as identified in the Appendix, are accepted to be effective February 23, 2006, subject to Entrega filing revised tariff sheets, within 15 days of the date this order, consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[37] Rate Schedule PAL offers a standard parking and lending service to provide shippers with an additional means of managing their transportation portfolios. Rate Schedule APAL provides an automatic parking and lending service as a means of managing daily imbalances.

[38] *See Colorado Interstate Gas Co.*, 103 FERC ¶ 61,058 (2003).

Appendix

Entrega Gas Pipeline LLC
Docket Nos. CP04-413-002, CP04-414-002 and 003
FERC Gas Tariff
Original Volume No. 1

Effective February 23, 2006

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